Honorable Karen A. Overstreet

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: CHRISTOPHER PHILLIPS, d/b/a Seattle Eye Surgeons, P.S., d/b/a Lomas LASIK and Eye Surgery Center, Debtor(s).	Chapter 7 Bankruptcy No. 08-14147
STANDARD INSURANCE COMPANY, Plaintiff, v. CHRISTOPHER B. PHILLIPS, Debtor, and NANCY L. JAMES, solely in her capacity as chapter 7 Trustee for Christopher Phillips, Defendants.	Adversary No. 08-01232 ANSWER AND CROSS CLAIM TO DETERMINE EXEMPTIONS AND FOR TURNOVER

COMES NOW defendant Nancy James, the duly appointed Chapter 7 bankruptcy trustee for Christopher Phillips, Bankruptcy No. 08-14147, filed in the Western District of Washington ("Trustee"), through counsel, The Rigby Law Firm, and Rory C. Livesey, and answers the plaintiff's complaint and cross claims against defendant Christopher B. Phillips ("Debtor") as follows:

ANSWER

1. Trustee has no knowledge of the truth of the assertions contained in paragraph 1 of the plaintiff's complaint and, therefore, denies the same.

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2. Admit.

3. Admit.

4. Admit.

5. Trustee has insufficient information to determine the truth of the matters contained in paragraph 5 of the plaintiff's complaint and, therefore, denies the same.

6. Trustee has insufficient information to determine the truth of the matters contained in paragraph 6 of the plaintiff's complaint and, therefore, denies the same.

7. Trustee has insufficient information to determine the truth of the matters contained in paragraph 7 of the plaintiff's complaint and, therefore, denies the same.

8. Trustee has insufficient information to determine the truth of the matters contained in paragraph 8 of the plaintiff's complaint and, therefore, denies the same.

9. Trustee has insufficient information to determine the truth of the matters contained in paragraph 9 of the plaintiff's complaint and, therefore, denies the same.

10. Trustee has insufficient information to determine the truth of the matters contained in paragraph 10 of the plaintiff's complaint and, therefore, denies the same.

11. Trustee has insufficient information to determine the truth of the matters contained in paragraph 11 of the plaintiff's complaint and, therefore, denies the same.

12. Trustee has insufficient information to determine the truth of the matters contained in paragraph 12 of the plaintiff's complaint and, therefore, denies the same.

13. Trustee has insufficient information to determine the truth of the matters contained in paragraph 13 of the plaintiff's complaint and, therefore, denies the same.

14. Trustee has insufficient information to determine the truth of the matters contained in paragraph 14 of the plaintiff's complaint and, therefore, denies the same.

15. Trustee has insufficient information to determine the truth of the matters contained in paragraph 15 of the plaintiff's complaint and, therefore, denies the same.

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16. Trustee has insufficient information to determine the truth of the matters contained in paragraph 16 of the plaintiff's complaint and, therefore, denies the same.

17. Trustee has insufficient information to determine the truth of the matters contained in paragraph 17 of the plaintiff's complaint and, therefore, denies the same.

18. Admit.

19. Trustee has insufficient information to determine the truth of the matters contained in paragraph 19 of the plaintiff's complaint and, therefore, denies the same.

20. Trustee admits the allegations contained in the last sentence of paragraph 20 of the plaintiff's complaint. Trustee has insufficient information to assess the truth or validity of the remaining allegations in paragraph 20 and, therefore, denies the same.

21. Admit.

22. Paragraph 22 appears to be a request for relief and does not require an answer. To the extent that an answer is required, Trustee denies the allegations contained therein.

23. Paragraph 23 appears to be a request for relief and does not require an answer. To the extent that an answer is required, Trustee denies the allegations contained therein.

24. Paragraph 24 appears to be a request for relief and does not require an answer. To the extent that an answer is required, Trustee denies the allegations contained therein.

25. Paragraphs 1 through 5 of the plaintiff's prayer do not require an answer. To the extent that an answer is required, Trustee denies the allegations contained therein.

CROSS CLAIM

By way of further response, Trustee makes the following cross claim against Debtor:

1. The cross plaintiff is the duly qualified and acting Trustee of the estate of the above-named Debtor.

2. Debtor filed his Chapter 7 bankruptcy petition on July 2, 2008.

3. This cross claim is an adversary proceeding arising out of the Chapter 7 case of Debtor now pending before this court. This court had jurisdiction over this adversary proceeding

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pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (E) and (O). Venue in this court is proper under 28 U.S.C. § 1409.

A. Determination of Debtor's Exemption

4. As part of his original bankruptcy petition, Debtor filed a Schedule C - Claim of Exemptions. (*See* Bankruptcy No. 08-14147, Docket No. 1).

5. On August 15, 2008, Trustee filed an objection to the claims of exemption. (*See* Bankruptcy No. 08-14147, Docket No. 23.)

6. On October 7, 2008, Debtor filed an Amended Schedule C. (*See* Bankruptcy No. 08-14147, Docket No. 58.) Unlike the original Schedule C, the Amended Schedule C references the Standard Insurance Policy claim at issue in the plaintiff's complaint.

7. On October 31, 2008, Trustee filed an objection to the amended exemption schedule. (*See* Bankruptcy No. 08-14147, Docket No. 65.)

8. Pursuant to that objection, Debtor is not entitled to claim an exemption in the Standard Insurance Policy and in payments generated therefrom, or in other property listed on both the original Schedule C and the Amended Schedule C as referenced in either the original objection to exemptions or the amended objection to exemption.

B. Turnover of Property of the Estate

9. After the filing of Debtor's bankruptcy petition, he received $8,260.13 from Standard Insurance Company.

10. These funds are property of the bankruptcy estate and have not been turned over to Trustee.

WHEREFORE, Trustee prays for a judgment against Debtor as follows:

(i) for an order determining Debtor's exemptions;

(ii) for turnover of the $8,260.13 insurance premium received post-petition;

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(iii) for attorney’s fees and costs; and

(iv) for whatever relief the court deems just in the premises.

DATED this 10th day of November, 2008.

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/S/ *Rory C. Livesey*

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Rory C. Livesey, WSBA #17601
Of Attorneys for Defendant/Trustee

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